

AMENDED IN SENATE JUNE 26, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 193

Introduced by Committee on Budget (Evans (Chair), Arambula, Beall, Blumenfield, Brownley, Caballero, Carter, De La Torre, Feuer, Hill, Huffman, Monning, Ruskin, and Swanson)

February 2, 2009

~~An act relating to the Budget Act of 2009.~~ *An act to amend Sections 31 and 7145.5 of the Business and Professions Code, to amend Sections 6203, 18661, 18663, 19025, 19116, 19136, 19136.1, 19504, 19571, 19755, and 19777 of, and to add Sections 6225, 18407.5, 18662.5, 18664, 19265, 19266, 19560.5, and 19777.1 to, the Revenue and Taxation Code, and to amend Section 13020 of the Unemployment Insurance Code, relating to taxation, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

AB 193, as amended, Committee on Budget. ~~Budget Act of 2009.~~ *Taxation.*

(1) The Personal Income Tax Law and the Corporation Tax Law impose taxes on, or measured by, income. Existing law allows a tax return or return information filed under those laws to be disclosed in a judicial or administrative proceeding pertaining to tax administration under certain circumstances. Existing law requires every board, as defined under the Business and Professions Code, and the Department of Insurance to, upon request of the Franchise Tax Board, furnish to the Franchise Tax Board certain information with respect to every licensee.

This bill would require a state governmental licensing entity, as defined, issuing professional or occupational licenses, certificates, registrations, or permits to provide to the Franchise Tax Board the name and social security number or federal taxpayer identification number of each individual licensee of that entity. The bill would require the Franchise Tax Board, if an individual licensee fails to pay taxes for which a notice of state tax lien has been recorded, as specified, to send a notice of suspension to the licensee. The bill would provide that the license of a licensee who fails to satisfy the unpaid taxes by a certain date shall be automatically suspended, except as specified, and would require the Franchise Tax Board to mail a notice of suspension to the applicable state governmental licensing entity and to the licensee, and would provide that the suspension be canceled upon compliance with the tax obligation. The bill would require the Franchise Tax Board to meet certain requirements and would make related changes. The bill would make implementation of its provisions contingent upon appropriation of funds for that purpose in the annual Budget Act.

(2) The Sales and Use Tax Law imposes a tax on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state, or on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for storage, use or other consumption in this state, measured by sales price. That law defines a “retailer engaged in business in this state” to include retailers that engage in specified activities in this state and requires every retailer engaged in business in this state and making sales of tangible personal property for storage, use, or other consumption in this state to register with the State Board of Equalization and to collect the tax from the purchaser and remit it to the board.

This bill would include in the definition of a “retailer engaged in business in this state” any retailer entering into agreements under which a person in this state, for a commission or other consideration, directly or indirectly refers potential purchasers, whether by a link or an Internet Web site or otherwise, to the retailer, provided the total cumulative sales price from all sales by the retailer to purchasers in this state that are referred pursuant to these agreements is in excess of \$10,000 within the preceding 12 months, except as specified.

(3) The Sales and Use Tax Law requires a person conducting business as a seller of tangible personal property in this state to obtain a permit from the State Board of Equalization for each place of business and also requires a person selling tangible personal property for storage,

use, or other consumption in this state to register with the State Board of Equalization.

This bill would require a qualified purchaser, as defined, to register with the State Board of Equalization and to report and pay by April 15, the use tax owed for the previous calendar year, as provided. This bill would not apply to the purchase of a vehicle, vessel, or aircraft.

(4) The Franchise Tax Board administers the Personal Income Tax Law and the Corporation Tax Law. Existing law authorizes persons that are required to withhold taxes from recipients of income to require the recipients of the income to provide that person with the recipient's name and address.

This bill would require the recipient of income to also provide the person paying the income with the recipient's social security number or other taxpayer identification number if requested by the person paying the income.

(5) Existing law provides that the Franchise Tax Board, may, by regulation, require any person to withhold an amount, determined by the Franchise Tax Board to reasonably represent the amount of tax due, as specified, and to transmit the amount withheld to the Franchise Tax Board at a designated time.

This bill would, in modified conformity with the federal income tax law, require backup withholding, as provided, at a rate of 7% on specified payments made on or after January 1, 2010, whenever such payments are subject to federal backup withholding.

(6) Existing law requires the Franchise Tax Board to prepare wage withholding tables to be used by employers for purposes of withholding taxes on wages paid. Existing law allows, in lieu of the withholding tables, withholding at a rate of 6% with respect to supplemental wages and at a rate of 9.3% with respect to stock options and bonus payments.

This bill would, for wages paid on or after October 1, 2009, require the wage withholding tables to produce a sum that is equal to 10% more than the sum specified for purposes of the withholding tables. This bill would, also increase the withholding rates to 6.6% for supplemental wages and to 10.23% for stock options and bonus payments paid on or after October 1, 2009.

(7) Existing law requires every employer who pays wages to an employee for services performed in this state to withhold from those wages, except as provided, specified income taxes, and authorizes the Franchise Tax Board to impose specified requirements for withholding of those taxes.

This bill would, on and after January 1, 2010, require a person engaged in a trade or business required to file a federal Form 1099-MISC, as described, to deduct and withhold tax for medical and health care payments and nonemployee compensation in the amount of 3% of payments to residents and 7% of payments to nonresidents, with certain exceptions. The bill would require all state agencies to cooperate with the Franchise Tax Board to expedite associated procurement, and the development, implementation, and operation of this withholding program.

This bill would establish a new crime with respect to the failure to withhold taxes, and thus would create a state-mandated local program.

(8) Existing income tax laws require specified individuals to pay estimated income taxes in installments and impose additional liability for underpayments.

This bill would adjust the amount of those installments under specified circumstances.

(9) The Personal Income Tax Law and the Corporation Tax Law impose a penalty for underpayment of estimated tax. Existing law provides for a credit based on taxes withheld on wages, in modified conformity with federal income tax laws, against the estimated tax payments, including a provision that “an equal part” of that amount is deemed paid on each due date for a taxable year.

This bill would substitute “the applicable percentage,” as defined, for “an equal part” under this provision, as provided.

(10) Existing laws require the Franchise Tax Board to administer specified taxes and collect those taxes from delinquent tax debtors.

This bill would require the board, in coordination with financial institutions doing business in this state, to operate a Financial Institution Record Match System utilizing automated data exchanges to the maximum extent feasible in order to allow the board to match its list of delinquent tax debtors with the lists provided by the financial institutions. The bill would authorize the board to disclose specified taxpayer information for purposes of data matching, to institute civil proceedings to enforce specified provisions of the bill, and would impose specified penalties on financial institutions for failure to provide records in connection with the match system, as provided. This bill would provide that the specified use of certain data is a misdemeanor.

(11) Existing law imposes various taxes and fees, and certain penalties in connection with tax avoidance and abusive tax shelters, including reportable transactions.

This bill would expand the definition of reportable transactions to include abusive tax avoidance transactions, as defined, and transactions of interest, as defined. This bill would also make technical, nonsubstantive changes to conform to this reference.

(12) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(13) This bill would declare that it is to take effect immediately as an urgency statute.

~~This bill would express the intent of the Legislature to enact statutory changes relating to the Budget Act of 2009.~~

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: ~~no~~-yes. State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 31 of the Business and Professions Code*
2 *is amended to read:*

3 31. (a) As used in this section, “board” means any entity listed
4 in Section 101, the entities referred to in Sections 1000 and 3600,
5 the State Bar, the Department of Real Estate, and any other state
6 agency that issues a license, certificate, or registration authorizing
7 a person to engage in a business or profession.

8 (b) Each applicant for the issuance or renewal of a license,
9 certificate, registration, or other means to engage in a business or
10 profession regulated by a board who is not in compliance with a
11 judgment or order for support shall be subject to Section ~~11350.6~~
12 17520 of the ~~Welfare and Institutions~~ Family Code.

13 (c) “Compliance with a judgment or order for support,” has the
14 meaning given in paragraph (4) of subdivision (a) of Section
15 ~~11350.6~~ 17520 of the ~~Welfare and Institutions~~ Family Code.

16 (d) *Each licensee who has not paid any applicable state income*
17 *tax, including interest, penalties, and other fees, shall be subject*
18 *to Section 19265 of the Revenue and Taxation Code.*

19 *SEC. 2. Section 7145.5 of the Business and Professions Code*
20 *is amended to read:*

1 7145.5. (a) The registrar may refuse to issue, reinstate,
2 reactivate, or renew a license or may suspend a license for the
3 failure of a licensee to resolve all outstanding final liabilities, which
4 include taxes, additions to tax, penalties, interest, and any fees that
5 may be assessed by the board, the Department of Industrial
6 Relations, the Employment Development Department, or the
7 Franchise Tax Board.

8 (1) Until the debts covered by this section are satisfied, the
9 qualifying person and any other personnel of record named on a
10 license that has been suspended under this section shall be
11 prohibited from serving in any capacity that is subject to licensure
12 under this chapter, but shall be permitted to act in the capacity of
13 a nonsupervising bona fide employee.

14 (2) The license of any other renewable licensed entity with any
15 of the same personnel of record that have been assessed an
16 outstanding liability covered by this section shall be suspended
17 until the debt has been satisfied or until the same personnel of
18 record disassociate themselves from the renewable licensed entity.

19 (b) The refusal to issue a license or the suspension of a license
20 as provided by this section shall be applicable only if the registrar
21 has mailed a notice preliminary to the refusal or suspension that
22 indicates that the license will be refused or suspended by a date
23 certain. This preliminary notice shall be mailed to the licensee at
24 least 60 days before the date certain.

25 (c) (1) In the case of outstanding final liabilities assessed by
26 the Franchise Tax Board, this section shall be operative within 60
27 days after the Contractors' State License Board has provided the
28 Franchise Tax Board with the information required under Section
29 30, relating to licensing information that includes the federal
30 employee identification number or social security number.

31 ~~(d)~~

32 (2) All versions of the application for contractors' licenses shall
33 include, as part of the application, an authorization by the applicant,
34 in the form and manner mutually agreeable to the Franchise Tax
35 Board and the board, for the Franchise Tax Board to disclose the
36 tax information that is required for the registrar to administer this
37 section. The Franchise Tax Board may from time to time audit
38 these authorizations.

1 (d) *This section shall not be interpreted to conflict with the*
2 *suspension of a license pursuant to Section 19265 of the Revenue*
3 *and Taxation Code.*

4 SEC. 3. *Section 6203 of the Revenue and Taxation Code is*
5 *amended to read:*

6 6203. (a) Except as provided by Sections 6292 and 6293, every
7 retailer engaged in business in this state and making sales of
8 tangible personal property for storage, use, or other consumption
9 in this state, not exempted under Chapter 3.5 (commencing with
10 Section 6271) or Chapter 4 (commencing with Section 6351),
11 shall, at the time of making the sales or, if the storage, use, or other
12 consumption of the tangible personal property is not then taxable
13 hereunder, at the time the storage, use, or other consumption
14 becomes taxable, collect the tax from the purchaser and give to
15 the purchaser a receipt therefor in the manner and form prescribed
16 by the board.

17 (b) As respects leases constituting sales of tangible personal
18 property, the tax shall be collected from the lessee at the time
19 amounts are paid by the lessee under the lease.

20 (c) “Retailer engaged in business in this state” as used in this
21 section and Section 6202 means and includes any of the following:

22 (1) Any retailer maintaining, occupying, or using, permanently
23 or temporarily, directly or indirectly, or through a subsidiary, or
24 agent, by whatever name called, an office, place of distribution,
25 sales or sample room or place, warehouse or storage place, or other
26 place of business.

27 (2) Any retailer having any representative, agent, salesperson,
28 canvasser, independent contractor, or solicitor operating in this
29 state under the authority of the retailer or its subsidiary for the
30 purpose of selling, delivering, installing, assembling, or the taking
31 of orders for any tangible personal property.

32 (3) As respects a lease, any retailer deriving rentals from a lease
33 of tangible personal property situated in this state.

34 (4) (A) Any retailer soliciting orders for tangible personal
35 property by mail if the solicitations are substantial and recurring
36 and if the retailer benefits from any banking, financing, debt
37 collection, telecommunication, or marketing activities occurring
38 in this state or benefits from the location in this state of authorized
39 installation, servicing, or repair facilities.

1 (B) This paragraph shall become operative upon the enactment
2 of any congressional act that authorizes states to compel the
3 collection of state sales and use taxes by out-of-state retailers.

4 (5) (A) *Any retailer entering into an agreement or agreements*
5 *under which a person or persons in this state, for a commission*
6 *or other consideration, directly or indirectly refers potential*
7 *purchasers of tangible personal property to the retailer; whether*
8 *by a link or an Internet Web site or otherwise, provided that the*
9 *total cumulative sales price from all of the retailer's sales of*
10 *tangible personal property to purchasers in this state that are*
11 *referred pursuant to all of those agreements with a person or*
12 *persons in this state, within the preceding 12 months, is in excess*
13 *of ten thousand dollars (\$10,000).*

14 (B) *This paragraph shall not apply if the retailer can*
15 *demonstrate that the person in this state with whom the retailer*
16 *has an agreement did not engage in referrals in the state on behalf*
17 *of the retailer that would satisfy the requirements of the commerce*
18 *clause of the United States Constitution.*

19 (C) *An agreement under which a retailer purchases*
20 *advertisements from a person or persons in this state, to be*
21 *delivered on television, radio, in print, on the Internet, or by any*
22 *other medium, is not an agreement described in subparagraph*
23 *(A), unless the advertisement revenue paid to the person or persons*
24 *in this state consists of commissions or other consideration that*
25 *is based upon sales of tangible personal property.*

26 ~~(5)~~

27 (6) Notwithstanding Section 7262, a retailer specified in
28 paragraph (4) above, and not specified in paragraph (1), (2), or (3)
29 above, is a “retailer engaged in business in this state” for the
30 purposes of this part and Part 1.5 (commencing with Section 7200)
31 only.

32 (d) (1) For purposes of this section, “engaged in business in
33 this state” does not include the taking of orders from customers in
34 this state through a computer telecommunications network located
35 in this state which is not directly or indirectly owned by the retailer
36 when the orders result from the electronic display of products on
37 that same network. The exclusion provided by this subdivision
38 shall apply only to a computer telecommunications network that
39 consists substantially of online communications services other
40 than the displaying and taking of orders for products.

(2) This subdivision shall become inoperative upon the operative date of provisions of a congressional act that authorize states to compel the collection of state sales and use taxes by out-of-state retailers.

(e) Except as provided in this subdivision, a retailer is not a “retailer engaged in business in this state” under paragraph (2) of subdivision (c) if that retailer’s sole physical presence in this state is to engage in convention and trade show activities as described in Section 513(d)(3)(A) of the Internal Revenue Code, and if the retailer, including any of his or her representatives, agents, salespersons, canvassers, independent contractors, or solicitors, does not engage in those convention and trade show activities for more than 15 days, in whole or in part, in this state during any 12-month period and did not derive more than one hundred thousand dollars (\$100,000) of net income from those activities in this state during the prior calendar year. Notwithstanding the preceding sentence, a retailer engaging in convention and trade show activities, as described in Section 513(d)(3)(A) of the Internal Revenue Code, is a “retailer engaged in business in this state,” and is liable for collection of the applicable use tax, with respect to any sale of tangible personal property occurring at the convention and trade show activities and with respect to any sale of tangible personal property made pursuant to an order taken at or during those convention and trade show activities.

(f) Any limitations created by this section upon the definition of “retailer engaged in business in this state” shall only apply for purposes of tax liability under this code. Nothing in this section is intended to affect or limit, in any way, civil liability or jurisdiction under Section 410.10 of the Code of Civil Procedure.

SEC. 4. Section 6225 is added to the Revenue and Taxation Code, to read:

6225. (a) In order to facilitate the collection of use tax imposed by this part, a qualified purchaser shall register with the board on a form prescribed by the board and shall set forth the name under which the qualified purchaser transacts or intends to transact business, the location of the qualified purchaser’s place or places of business, and other information as the board may require.

(b) Article 1 (commencing with Section 6451) of Chapter 5 of this part shall apply to a qualified purchaser, except that a return

1 *showing the total sales price of the tangible personal property*
2 *purchased by the qualified purchaser, the storage, use, or other*
3 *consumption of which became subject to the use tax during the*
4 *preceding calendar year, and which was not paid to a retailer*
5 *required to collect the tax or which was not paid to a retailer the*
6 *qualified purchaser reasonably believed was required to collect*
7 *the tax, shall be filed, together with a remittance of the amount of*
8 *the tax due, with the board on or before April 15.*

9 *(c) A “qualified purchaser” means a person that meets all of*
10 *the following conditions:*

11 *(1) The person is required to hold a business license as required*
12 *by the local ordinance of the city, county, or city and county in*
13 *which the person conducts business.*

14 *(2) The person is not required to hold a seller’s permit pursuant*
15 *to this part.*

16 *(3) The person is not required to be registered pursuant to*
17 *Section 6226.*

18 *(4) The person is not a holder of a use tax direct payment permit*
19 *as described in Section 7051.3.*

20 *(5) The person receives at least one hundred thousand dollars*
21 *(\$100,000) in gross receipts from business operations per calendar*
22 *year.*

23 *(6) The person is not otherwise registered with the board to*
24 *report use tax.*

25 *(d) This section shall not apply to the purchase of a vehicle,*
26 *vessel, or aircraft as defined in Article 1 (commencing with Section*
27 *6271) of Chapter 3.5 of this part.*

28 *SEC. 5. Section 18407.5 is added to the Revenue and Taxation*
29 *Code, to read:*

30 *18407.5. (a) The term “reportable transaction,” as defined*
31 *in paragraph (3) of subdivision (a) of Section 18407, shall also*
32 *include any transaction of a type that the Secretary of the Treasury*
33 *under Section 6011 of the Internal Revenue Code for federal*
34 *income tax purposes or the Franchise Tax Board under this section*
35 *for California income or franchise tax purposes determines is a*
36 *transaction of interest, and shall be reported on the return or the*
37 *statement required to be made.*

38 *(b) A transaction of interest is a transaction that is the same as*
39 *or substantially similar to one of the types of transactions that the*
40 *Franchise Tax Board has identified by notice, regulation, or other*

1 *form of published guidance as a transaction of interest. In addition,*
2 *any transaction of interest identified and published pursuant to*
3 *the preceding sentence shall be published on the Internet Web site*
4 *of the Franchise Tax Board.*

5 *(c) This section shall apply any to transaction of interest*
6 *published on or after the effective date of the act adding this*
7 *section.*

8 *SEC. 6. Section 18661 of the Revenue and Taxation Code is*
9 *amended to read:*

10 18661. When necessary to make effective the provisions of
11 this article or Article 4 (commencing with Section 18631), the
12 ~~name and address~~, address, social security number, or other
13 taxpayer identification number of the recipient of income shall be
14 furnished upon demand of the person paying the income.

15 *SEC. 7. Section 18662.5 is added to the Revenue and Taxation*
16 *Code, to read:*

17 18662.5. (a) (1) Any person engaged in a trade or business
18 that is required to file federal Form 1099-MISC in accordance
19 with Section 6041A of the Internal Revenue Code, and any
20 regulation thereunder, to report amounts paid to any person for
21 medical and health care payments and nonemployee compensation,
22 shall deduct and withhold tax as prescribed in subdivision (b) from
23 the total amount of those payments in any calendar year.

24 (2) For purposes of this section:

25 (A) Medical and health care payments refers to amounts
26 reported in Box 6 of federal Form 1099-MISC or substantially
27 equivalent amounts reported on a successor federal form.

28 (B) Nonemployee compensation refers to amounts reported in
29 Box 7 of federal Form 1099-MISC or substantially equivalent
30 amounts reported on a successor federal form.

31 (3) Any person required by paragraph (2) of subdivision (d) to
32 electronically remit amounts withheld shall also be required to
33 electronically file information with the Franchise Tax Board at
34 the time and in the form and manner prescribed by the Franchise
35 Tax Board.

36 (b) The rate of tax to be deducted and withheld shall be 3
37 percent for payments to residents and 7 percent for payments to
38 nonresidents.

39 (c) All of the following payments are exempt from withholding
40 under this section:

1 (1) *Payments to tax-exempt entities, governments, and*
2 *intragovernmental payments.*

3 (2) *Payments of wages subject to withholding under Section*
4 *13020 of the Unemployment Insurance Code or any other payment*
5 *on which amounts have been deducted and withheld under Section*
6 *18662.*

7 (d) (1) *Any amounts withheld pursuant to this section shall be*
8 *remitted to the Franchise Tax Board in accordance with the due*
9 *dates prescribed for making estimated tax payments pursuant to*
10 *Section 6654(c)(2) of the Internal Revenue Code or on any*
11 *alternative due dates prescribed by the Franchise Tax Board.*

12 (2) *Any person required to remit amounts withheld pursuant to*
13 *this section with respect to payments made to 250 or more persons*
14 *during the calendar year shall electronically remit the amounts*
15 *withheld in the form and manner prescribed by the Franchise Tax*
16 *Board.*

17 (3) *The due date prescribed by this section for remitting amounts*
18 *withheld pursuant to this section shall be used to compute the*
19 *amount of interest assessed under subdivision (b) of Section 18668.*

20 (4) *For purposes of the penalty imposed under Sections 19136*
21 *and 19142, any amount withheld and remitted to the Franchise*
22 *Tax Board pursuant to this section shall be considered a payment*
23 *of estimated tax and, unless the Franchise Tax Board prescribes*
24 *otherwise in regulations, the effective date of any such payment*
25 *of estimated tax shall be the date the amount is remitted to the*
26 *Franchise Tax Board.*

27 (e) *Chapter 3.5 (commencing with Section 11340) of Part 1 of*
28 *Division 3 of Title 2 of the Government Code shall not apply to*
29 *any standard, criterion, procedure, determination, rule, notice, or*
30 *guideline established or issued by the Franchise Tax Board to*
31 *implement this section, including any alternative due date*
32 *prescribed under paragraph (1) of subdivision (d) and any*
33 *requirements for submission of information under paragraph (3)*
34 *of subdivision (a).*

35 (f) *The Franchise Tax Board may prescribe those regulations*
36 *that may be necessary or appropriate to administer this section.*

37 (g) *Notwithstanding any state law, regulation, policy, procedure,*
38 *or guideline, including those set forth in any state manual, or*
39 *process or procedure implemented by the Franchise Tax Board,*
40 *all state agencies shall cooperate with the Franchise Tax Board*

1 to expedite the procurement, development, implementation, and
2 operation of the withholding program under this section, and shall
3 delegate to the Franchise Tax Board, to the full extent possible,
4 all functions including acquisition authority as provided in Chapter
5 2 (commencing with Section 10290) and Chapter 3 (commencing
6 with Section 12100) of Part 2 of Division 2 of the Public Contract
7 Code, that may assist the Franchise Tax Board. All state agencies
8 shall give review processes affecting the withholding program
9 their highest priority and expedite these review processes to require
10 no more than 20 state business days.

11 (h) Notwithstanding any other law, any procurement necessary
12 to administer the withholding program, and any bid protest
13 conducted under this section, shall be subject to the following
14 procedures:

15 (1) The Executive Officer of the Franchise Tax Board, or his
16 or her designee, may consider and decide initial protests. A
17 decision regarding initial protest shall be final.

18 (2) A contract may be entered into pending a final decision on
19 a protest. The protest shall not prevent the commencement of work
20 in accordance with the terms of the contract awarded.

21 (3) Protests shall be limited to participating bidders.

22 (4) A protest shall be filed within five days of the posting of the
23 notice of the award. The Department of General Services shall
24 review a protest within seven days of the filing date. If the
25 Department of General Services finds that a protest is clearly
26 insufficient on its face, entirely without merit, or outside the scope
27 of permissible protest, it may make a final disposition of the protest.

28 (5) The Director of General Services shall issue a ruling within
29 a period not to exceed 45 days from the date the protest is filed.

30 (6) Grounds to protest under this section shall be limited to
31 violations of the solicitation procedures resulting in the protestant's
32 proposal not being selected. These grounds shall be stated in the
33 solicitation document with the protest procedures.

34 (7) Any bidder that has filed a protest that is determined by the
35 Department of General Services to be clearly insufficient on its
36 face, entirely without merit, or outside the scope of permissible
37 protest, shall not be eligible to participate in solicitations
38 conducted under this section.

39 (i) To protect public confidence in the integrity of the
40 procurements described in this section, the State Auditor shall

1 *monitor the evaluation and selection process and shall certify*
2 *whether the evaluation was based on the evaluation criteria*
3 *contained in the solicitation document, the vendor or vendors were*
4 *chosen according to the selection methodology in the solicitation*
5 *document, and both of these activities were carried out without*
6 *bias or favoritism toward any bidder.*

7 *(j) This section shall apply only to payments made on or after*
8 *January 1, 2010.*

9 *SEC. 8. Section 18663 of the Revenue and Taxation Code is*
10 *amended to read:*

11 18663. (a) (1) The Franchise Tax Board shall annually (or
12 more often if necessary) prepare and make available to the
13 Employment Development Department, wage withholding tables
14 that shall be used by every employer making payment of any wages
15 to a resident employee for services performed either within or
16 without this state; or to a nonresident employee for services
17 performed in this state, to deduct and withhold from those wages
18 for each payroll period, a tax computed in a manner as to produce,
19 so far as practicable, with due regard to the credits for personal
20 exemptions allowable under Section 17054, a sum that is
21 substantially equivalent to the amount of tax reasonably estimated
22 to be due under Part 10 (commencing with Section 17001) resulting
23 from the inclusion in the gross income of the employee the wages
24 which were subject to withholding.

25 (2) *For wages paid on or after October 1, 2009, wage*
26 *withholding tables prepared by the Franchise Tax Board pursuant*
27 *to this subdivision shall produce, so far as practicable, with due*
28 *regard to the credits for personal exemptions allowable under*
29 *Section 17054, a sum that will significantly prevent*
30 *underwithholding by using an amount equal to 10 percent more*
31 *than the sum described in paragraph (1).*

32 (b) (1) (A) For supplemental wages paid on or after January
33 1, 1992, the rate of withholding that may be applied to
34 supplemental wages in lieu of the wage withholding tables
35 specified in subdivision (a) shall be 6 percent.

36 (B) *For supplemental wages paid on or after October 1, 2009,*
37 *the rate of withholding shall be 6.6 percent.*

38 (2) For purposes of this subdivision, “supplemental wages”
39 includes, but is not limited to, bonus payments, overtime payments,
40 commissions, sales awards, back pay including retroactive wage

1 increases, and reimbursements for nondeductible moving expenses
2 that are paid for the same or a different period, or without regard
3 to a particular period.

4 (c) (1) For stock options and bonus payments that constitute
5 wages paid on or after January 1, 2002, the rate of withholding
6 that may be applied to those stock options and bonus payments in
7 lieu of the wage withholding tables specified in subdivision (a)
8 shall, notwithstanding subdivision (b), be 9.3 percent.

9 (2) *For stock options and bonus payments that constitute wages*
10 *paid on or after October 1, 2009, the rate of withholding shall be*
11 *10.23 percent.*

12 SEC. 9. *Section 18664 is added to the Revenue and Taxation*
13 *Code, to read:*

14 18664. (a) (1) *Section 3406 of the Internal Revenue Code,*
15 *relating to the backup withholding, shall apply, except as otherwise*
16 *provided.*

17 (2) *For purposes of this section, the term “reportable payment,”*
18 *as defined in Section 3406(b) of the Internal Revenue Code, shall*
19 *include payments of items of income as defined in Section 18662,*
20 *and any regulations thereunder; with respect to rents, prizes and*
21 *winnings, compensation for services, including bonuses, and other*
22 *fixed or determinable annual or periodic gains, profits, and income.*

23 (3) *This section shall not apply to either of the following:*

24 (A) *Payment of interest and dividends.*

25 (B) *Any release of loan funds made by a financial institution in*
26 *the normal course of business.*

27 (4) *For the purposes of subparagraph (B) of paragraph (3),*
28 *“financial institution” means any of the following:*

29 (A) *A depository institution, as defined in Section 1813(c) of*
30 *Title 12 of the United States Code.*

31 (B) *An institution-affiliated party, as defined in Section 1813(u)*
32 *of Title 12 of the United States Code.*

33 (C) *Any federal credit union or state credit union, as defined*
34 *in Section 1752 of Title 12 of the United States Code, including*
35 *an institution-affiliated party of a credit union, as defined in*
36 *Section 1786(r) of Title 12 of the United States Code.*

37 (b) *The amount of tax to be withheld shall be computed by*
38 *applying a rate of 7 percent to the reportable payment.*

(c) Where withholding under both this section and other provisions of this article would otherwise be required, withholding shall only be required under this section.

(d) Any payer required to withhold tax pursuant to this section shall notify the payee of such withholding at a time and in a manner as may be prescribed in forms and instructions by the Franchise Tax Board.

(e) This section shall apply to payments made on or after January 1, 2010.

SEC. 10. Section 19025 of the Revenue and Taxation Code is amended to read:

19025. (a) If the amount of estimated tax does not exceed the minimum tax specified by Section 23153, the entire amount of the estimated tax shall be due and payable on or before the 15th day of the fourth month of the taxable year.

(b) Except as provided in subdivision (c), if the amount of estimated tax exceeds the minimum tax specified by Section 23153, the amount payable shall be paid in installments as follows:

If the requirements of this subdivision are first met—	The following percentages of the estimated tax shall be paid on the 15th day of the—			
	4th month	6th month	9th month	12th month
Before the 1st day of the 4th month of the taxable year.....	30 (but not less than the minimum tax provided in Section 23153 and any tax under Section 23800.5)	30 40	20 0	20 30

1	After the last day of				
2	the 3rd month and				
3	before the 1st day				
4	of the 6th month				
5	of the taxable		40	30	30
6	year.....	—	60	0	40
7	After the last day of				
8	the 5th month and				
9	before the 1st day				
10	of the 9th month				
11	of the taxable			50	50
12	year.....	—	—	100	0
13	After the last day of				
14	the 8th month and				
15	before the 1st day				
16	of the 12th month				
17	of the taxable				
18	year.....	—	—	—	100

19
20 (c) If a wholly owned subsidiary is first subject to tax under
21 Section 23800.5 after the last day of the third month of the taxable
22 year of owner, the amount of the next installment of estimated tax
23 under subdivision (b) after the wholly owned subsidiary is subject
24 to tax under Section 23800.5 shall not be less than the amount of
25 the tax of the wholly owned subsidiary under Section 23800.5 and
26 an amount equal to that amount shall be due and payable on the
27 date the installment is required to be paid. For purposes of
28 determining which installment is the next installment of estimated
29 tax under subdivision (b), subdivision (b) shall be modified by
30 substituting “includes the tax of a wholly owned subsidiary under
31 Section 23800.5” for “exceeds the minimum tax specified by
32 Section 23153.”

33 (d) The amendments made to this section by the act adding this
34 subdivision shall apply to installments due for each taxable year
35 beginning on or after January 1, 2009, and before January 1, 2010.

36 (e) The amendments made to this section by the act adding this
37 subdivision shall apply to installments due for each taxable year
38 beginning on or after January 1, 2010.

39 SEC. 11. Section 19116 of the Revenue and Taxation Code is
40 amended to read:

19116. (a) In the case of an individual who files a return of tax imposed under Part 10 (commencing with Section 17001) for a taxable year on or before the due date for the return, including extensions, if the Franchise Tax Board does not provide a notice to the taxpayer specifically stating the taxpayer's liability and the basis of the liability before the close of the notification period, the Franchise Tax Board shall suspend the imposition of any interest, penalty, addition to tax, or additional amount with respect to any failure relating to the return which is computed by reference to the period of time the failure continues to exist and which is properly allocable to the suspension period.

(b) For purposes of this section:

(1) Except as provided in subdivision (e), "notification period" means the 18-month period beginning on the later of either of the following:

(A) The date on which the return is filed.

(B) The due date of the return without regard to extensions.

(2) "Suspension period" means the period beginning on the day after the close of the notification period and ending on the date which is 15 days after the date on which notice described in subdivision (a) is provided by the Franchise Tax Board.

(c) This section shall be applied separately with respect to each item or adjustment.

(d) This section shall not apply to any of the following:

(1) Any penalty imposed by Section 19131.

(2) Any penalty imposed by Section 19132.

(3) Any interest, penalty, addition to tax, or additional amount involving fraud.

(4) Any interest, penalty, addition to tax, or additional amount with respect to any tax liability shown on the return.

(5) Any criminal penalty.

(6) Any interest, penalty, addition to tax, or additional amount with respect to any gross misstatement.

(7) Any interest, penalty, addition to tax, or additional amount relating to any reportable transaction with respect to which the requirements of Section 6664(d)(2)(A) of the Internal Revenue Code are not met, and any listed transaction, as defined in Section 6707A(c) of the Internal Revenue Code.

1 (8) *Any interest, penalty, addition to tax, or additional amount*
2 *relating to any abusive tax avoidance transaction, as defined in*
3 *Section 19777, as amended by the act adding this paragraph.*

4 (e) For taxpayers required by subdivision (a) of Section 18622
5 to report a change or correction by the Commissioner of Internal
6 Revenue or other officer of the United States or other competent
7 authority the following rules shall apply:

8 (1) The notification period under subdivision (a) shall be either
9 of the following:

10 (A) One year from the date the notice required by Section 18622
11 is filed with the Franchise Tax Board by the taxpayer or the Internal
12 Revenue Service, if the taxpayer or the Internal Revenue Service
13 reports that change or correction within six months after the final
14 federal determination.

15 (B) Two years from the date when the notice required by Section
16 18622 is filed with the Franchise Tax Board by the taxpayer or the
17 Internal Revenue Service, if after the six-month period required
18 in Section 18622, a taxpayer or the Internal Revenue Service
19 reports a change or correction.

20 (2) The suspension period under subdivision (a) shall mean the
21 period beginning on the day after the close of the notification
22 period under paragraph (1) and ending on the date which is 15
23 days after the date on which notice described in subdivision (a) is
24 provided by the Franchise Tax Board.

25 (f) For notices sent after January 1, 2004, this section does not
26 apply to taxpayers with taxable income greater than two hundred
27 thousand dollars (\$200,000) that have been contacted by the
28 Franchise Tax Board regarding the use of a potentially abusive tax
29 shelter ~~(within the meaning of Section 19777)~~ *as defined by Section*
30 *19777, as added by Chapter 656 of the Statutes of 2003 and*
31 *amended by Section 331 of Chapter 183 of the Statutes of 2004.*

32 (g) This section shall apply to taxable years ending after October
33 10, 1999.

34 (h) The amendments made to this section by ~~the act adding this~~
35 ~~subdivision~~ *Chapter 691 of the Statutes of 2005* shall apply to
36 notices sent after January 1, 2005.

37 (i) *The amendments made to this section by the act adding this*
38 *subdivision shall apply to notices mailed, or amended returns filed,*
39 *on or after the effective date of the act adding this subdivision.*

1 *SEC. 12. Section 19136 of the Revenue and Taxation Code is*
2 *amended to read:*

3 19136. (a) Section 6654 of the Internal Revenue Code, relating
4 to failure by an individual to pay estimated income tax, shall apply,
5 except as otherwise provided.

6 (b) Section 6654(a)(1) of the Internal Revenue Code is modified
7 to refer to the rate determined under Section 19521 in lieu of
8 Section 6621 of the Internal Revenue Code.

9 (c) (1) Section 6654(e)(1) of the Internal Revenue Code, relating
10 to exceptions where the tax is a small amount, does not apply.

11 (2) No addition to the tax shall be imposed under this section
12 if the tax imposed under Section 17041 or 17048 and the tax
13 imposed under Section 17062 for the preceding taxable year, minus
14 the sum of any credits against the tax provided by Part 10
15 (commencing with Section 17001) or this part, or the tax computed
16 under Section 17041 or 17048 upon the estimated income for the
17 taxable year, minus the sum of any credits against the tax provided
18 by Part 10 (commencing with Section 17001) or this part, is less
19 than five hundred dollars (\$500), except in the case of a separate
20 return filed by a married person the amount shall be less than two
21 hundred fifty dollars (\$250).

22 (d) Section 6654(f) of the Internal Revenue Code does not apply
23 and for purposes of this section the term “tax” means the tax
24 imposed under Section 17041 or 17048 and the tax imposed under
25 Section 17062 less any credits against the tax provided by Part 10
26 (commencing with Section 17001) or this part, other than the credit
27 provided by subdivision (a) of Section 19002.

28 (e) (1) The credit for tax withheld on wages, as specified in
29 Section 6654(g) of the Internal Revenue Code, shall be the credit
30 allowed under subdivision (a) of Section 19002.

31 (2) (A) *Section 6654(g)(1) of the Internal Revenue Code is*
32 *modified by substituting the phrase “the applicable percentage”*
33 *for the phrase “an equal part.”*

34 (B) *For purposes of this paragraph, “applicable percentage”*
35 *means the percentage amount prescribed under Section*
36 *6654(d)(1)(A) of the Internal Revenue Code, as modified by*
37 *subdivision (a) of Section 19136.1.*

38 (f) This section shall apply to a nonresident individual.

39 (g) (1) No addition to tax shall be imposed under this section
40 to the extent that the underpayment was created or increased by

1 any provision of law that is chaptered during and operative for the
2 taxable year of the underpayment.

3 (2) Notwithstanding Section 18415, this section applies to
4 penalties imposed under this section on and after January 1, 2005.

5 (h) The amendments made to this section by the act adding this
6 ~~subdivision~~ *Section 5 of Chapter 305 of the Statutes of 2008* shall
7 apply to taxable years beginning on or after January 1, 2009.

8 (i) *The amendments made to this section by the act adding this*
9 *subdivision shall apply to amounts withheld on wages beginning*
10 *or after January 1, 2009.*

11 *SEC. 13. Section 19136.1 of the Revenue and Taxation Code*
12 *is amended to read:*

13 19136.1. (a) Section 6654(d)(1)(A) of the Internal Revenue
14 Code is modified to provide that in lieu of the required installments
15 specified in that section, the amount of required installments shall
16 instead be as follows:

17 (1) *For each taxable year beginning on or after January 1,*
18 *2009, and before January 1, 2010, the amount of required*
19 *installments shall be:*

20 ~~(1)~~

21 (A) For the 1st and 2nd required installments, 30 percent of the
22 required annual payment.

23 ~~(2)~~

24 (B) For the 3rd and 4th required installments, 20 percent of the
25 required annual payment.

26 (2) *For each taxable year beginning on or after January 1,*
27 *2010, the amount of required installments shall be:*

28 (A) *For the 1st required installment, 30 percent of the required*
29 *annual payment.*

30 (B) *For the 2nd required installment, 40 percent of the required*
31 *annual payment.*

32 (C) *The amount of the 3rd required installment shall be zero.*

33 (D) *For the 4th required installment, 30 percent of the required*
34 *annual payment.*

35 (b) *Section 6654(d)(2)(C)(ii) of the Internal Revenue Code,*
36 *relating to applicable percentage, is modified as follows:*

37 (1) *For each taxable year beginning on or after January 1,*
38 *2009, and before January 1, 2010, by substituting "27" for "22.5,"*
39 *"54" for "45," and "72" for "67.5."*

1 (2) *For each taxable year beginning on or after January 1,*
2 *2010, by substituting “27” for “22.5,” “63” for “45,” and “63”*
3 *for “67.5.”*

4 ~~(b)~~

5 (c) *This section shall apply to installments due for each taxable*
6 *year beginning on or after January 1, 2009.*

7 *SEC. 14. Section 19265 is added to the Revenue and Taxation*
8 *Code, to read:*

9 *19265. (a) (1) All state governmental licensing entities issuing*
10 *professional or occupational licenses, certificates, registrations,*
11 *or permits shall provide to the Franchise Tax Board the name and*
12 *social security number or federal taxpayer identification number,*
13 *as applicable, of each licensee of that state governmental licensing*
14 *entity.*

15 (2) *If any licensee has failed to pay taxes, including any*
16 *penalties, interest, and any applicable fees, imposed under Part*
17 *10 (commencing with Section 17001), Part 11 (commencing with*
18 *Section 23001), or this part, for which a notice of state tax lien*
19 *has been recorded in any county recorder’s office in this state,*
20 *pursuant to Chapter 14 (commencing with Section 7150) of*
21 *Division 7 of Title 1 of the Government Code, the Franchise Tax*
22 *Board shall mail a preliminary notice of suspension to the licensee*
23 *indicating that the license will be suspended by a date certain,*
24 *which shall be at least 60 days after the mailing of the preliminary*
25 *notice, unless prior to the date certain the licensee pays the unpaid*
26 *taxes or enters into an installment payment agreement, as described*
27 *in Section 19008, to satisfy the unpaid taxes. The preliminary*
28 *notice shall also advise the licensee of the opportunity to request*
29 *deferral or cancellation of a suspension pursuant to subdivision*
30 *(b).*

31 (3) *If any licensee subject to paragraph (2) fails to pay the*
32 *unpaid taxes or to enter into an installment payment agreement,*
33 *as described in Section 19008, to satisfy the unpaid taxes prior to*
34 *the date certain listed in the preliminary notice of suspension, his*
35 *or her license shall be automatically suspended by operation of*
36 *this section, except as provided in subdivision (b), and the*
37 *Franchise Tax Board shall provide a notice of suspension to the*
38 *applicable state governmental licensing entity and shall mail a*
39 *notice of suspension to the licensee. The rights, powers, and*
40 *privileges of any licensee whose professional or occupational*

1 *license, certificate, registration, or permit has been suspended*
2 *pursuant to this section shall be subject to the same prohibitions,*
3 *limitations, and restrictions as if the professional or occupational*
4 *license, certificate, registration, or permit were suspended by the*
5 *state governmental licensing entity that issued the professional or*
6 *occupational license, certificate, registration, or permit.*

7 *(4) Upon compliance by the licensee with the tax obligation,*
8 *either by payment of the unpaid taxes or entry into an installment*
9 *payment agreement, as described in Section 19008, to satisfy the*
10 *unpaid taxes, a suspension pursuant to this subdivision shall be*
11 *canceled. The Franchise Tax Board shall, within 10 business days*
12 *of compliance by the licensee with the tax obligation, notify both*
13 *the state governmental licensing entity and the licensee that the*
14 *unpaid taxes have been paid or that an installment payment*
15 *agreement, as described in Section 19008, has been entered into*
16 *to satisfy the unpaid taxes and that the suspension has been*
17 *canceled.*

18 *(5) If a license is not suspended, or if the suspension of a license*
19 *is canceled, based on the licensee entering into an installment*
20 *payment agreement as described in Section 19008, and the licensee*
21 *fails to comply with the terms of the installment payment*
22 *agreement, that license shall be suspended as of the date that is*
23 *30 days after the date of termination of that installment payment*
24 *agreement. If a license is suspended pursuant to this paragraph,*
25 *the Franchise Tax Board shall provide notice of suspension to the*
26 *applicable state governmental licensing entity and mail a notice*
27 *of suspension to the licensee.*

28 *(6) State governmental licensing entities shall provide to the*
29 *Franchise Tax Board the information required by this subdivision*
30 *at a time that the Franchise Tax Board may require.*

31 *(b) (1) The Franchise Tax Board may defer or cancel any*
32 *suspension authorized by this section if a licensee would experience*
33 *financial hardship. The Franchise Tax Board shall, if requested*
34 *by the licensee in writing, provide for an administrative hearing*
35 *to determine if the licensee will experience financial hardship from*
36 *the suspension of the license, certificate, registration, or permit.*

37 *(2) The request for a hearing specified in paragraph (1) shall*
38 *be made in writing within 30 days from the mailing date of the*
39 *preliminary notice described in subdivision (a).*

1 (3) *The Franchise Tax Board shall conduct a hearing within*
2 *30 days after receipt of a request pursuant to paragraph (1), unless*
3 *the board postpones the hearing, upon a showing of good cause*
4 *by the licensee, in which case a suspension pursuant to subdivision*
5 *(a) shall be deferred until the hearing has been completed.*

6 (4) *A licensee seeking relief under this subdivision shall only*
7 *be entitled to relief described in paragraph (1) if the licensee*
8 *provides the Franchise Tax Board with financial documents that*
9 *substantiate a financial hardship, and agrees to an acceptable*
10 *payment arrangement.*

11 (5) *If the deferral of a suspension of a license under this*
12 *subdivision is no longer operative, that license shall be suspended*
13 *as of the date that is 30 days after the date the deferral is no longer*
14 *operative. If a license is suspended pursuant to this paragraph,*
15 *the Franchise Tax Board shall provide notice of suspension to the*
16 *applicable state governmental licensing entity and mail a notice*
17 *of suspension to the licensee.*

18 (c) *For purposes of this section and Section 19571, the following*
19 *definitions shall apply:*

20 (1) *“Financial hardship” means financial hardship within the*
21 *meaning of Section 19008, as determined by the Franchise Tax*
22 *Board, where suspension of a license will result in the licensee*
23 *being financially unable to pay any part of the amount described*
24 *in subdivision (a) and the licensee is unable to qualify for an*
25 *installment payment arrangement as provided for by Section 19008.*
26 *In order to establish the existence of a financial hardship, the*
27 *licensee shall submit any information, including information*
28 *related to reasonable business and personal expenses, requested*
29 *by the Franchise Tax Board for the purpose of making that*
30 *determination.*

31 (2) *“License” includes a certificate, registration, or any other*
32 *authorization to engage in a profession or occupation issued by*
33 *a state governmental licensing entity.*

34 (3) *“Licensee” means an individual authorized by a license,*
35 *certificate, registration, or other authorization to engage in a*
36 *profession or occupation issued by a state governmental licensing*
37 *entity.*

38 (4) *State governmental licensing entity” means any entity listed*
39 *in Section 101, 1000, or 19420 of the Business and Professions*
40 *Code, the office of the Attorney General, the Department of*

1 *Insurance, the State Bar of California, the Department of Real*
2 *Estate, and any other state agency, board, or commission that*
3 *issues a license, certificate, or registration authorizing an*
4 *individual to engage in a profession or occupation. "State*
5 *governmental licensing entity" shall not include the Department*
6 *of Motor Vehicles.*

7 *(d) Implementation of this section shall be contingent on the*
8 *appropriation of funds for the purposes of this section in the annual*
9 *Budget Act.*

10 *(e) Notwithstanding any other law, a state governmental*
11 *licensing entity may, with the approval of the appropriate*
12 *department director or governing body, impose a fee on licensees*
13 *whose license has been suspended as described in subdivision (a).*
14 *The fee shall not exceed the amount necessary for the licensing*
15 *entity to cover its costs in carrying out the provisions of this*
16 *section. Fees imposed pursuant to this section shall be deposited*
17 *in the fund in which other fees imposed by the state governmental*
18 *licensing entity are deposited and shall be available to that entity*
19 *upon appropriation in the annual Budget Act.*

20 *(f) The process described in subdivision (b) shall constitute the*
21 *sole administrative remedy for contesting the suspension of a*
22 *license under this section. The procedures in the administrative*
23 *adjudication provisions of the Administrative Procedure Act*
24 *(Chapter 4.5 (commencing with Section 11400) and Chapter 5*
25 *(commencing with Section 11500) of Part 1 of Division 3 of Title*
26 *2 of the Government Code) shall not apply to the suspension of a*
27 *license pursuant to this section.*

28 *SEC. 15. Section 19266 is added to the Revenue and Taxation*
29 *Code, to read:*

30 *19266. (a) (1) The Franchise Tax Board, in coordination with*
31 *financial institutions doing business in this state, shall operate a*
32 *Financial Institution Record Match System utilizing automated*
33 *data exchanges to the maximum extent feasible.*

34 *(2) The Franchise Tax Board shall prescribe any rules and*
35 *regulations that may be necessary or appropriate to implement*
36 *this section. These rules and regulations shall include all of the*
37 *following:*

38 *(A) A structure by which financial institutions, or their*
39 *designated data-processing agents, shall receive from the*
40 *Franchise Tax Board the file or files of delinquent debtors that*

1 *the institution shall match with its own list of accountholders to*
2 *identify delinquent tax debtor accountholders at the institution.*

3 *(B) An option by which financial institutions without the*
4 *technical ability to process the data exchange, or without the ability*
5 *to employ a third-party data processor to process the data*
6 *exchange, may forward to the Franchise Tax Board a list of all*
7 *accountholders and their social security numbers or other taxpayer*
8 *identification numbers, so that the Franchise Tax Board shall*
9 *match that list with the file or files of delinquent tax debtors.*

10 *(C) Authority for the Franchise Tax Board to exempt a financial*
11 *institution from the requirements of this section if the Franchise*
12 *Tax Board determines that the financial institution participation*
13 *would not generate sufficient revenue to be cost effective for the*
14 *Franchise Tax Board.*

15 *(D) Authority for the Franchise Tax Board to temporarily*
16 *suspend the requirements of this section for a financial institution*
17 *if the financial institution provides the Franchise Tax Board with*
18 *a written notice from its supervisory banking authority that it is*
19 *determined to be undercapitalized, significantly undercapitalized,*
20 *or critically undercapitalized as defined by FDIC Regulation*
21 *325.103(b)(3), (4), and (5) or NCUA Regulation 702.102. The*
22 *notice provided pursuant to this section shall be subject to the*
23 *protections of Section 19542.*

24 *(b) The Financial Institution Data Record Match System shall*
25 *not be subject to any limitation set forth in Chapter 20*
26 *(commencing with Section 7460) of Division 7 of Title 1 of the*
27 *Government Code. However, any use of the information provided*
28 *pursuant to this section for any purpose other than the collection*
29 *of delinquent franchise or income tax or other debts referred to*
30 *the Franchise Tax Board for collection, as imposed under Part 5*
31 *(commencing with Section 10701), Part 10 (commencing with*
32 *Section 17001), Part 10.2 (commencing with Section 18401), or*
33 *Part 11 (commencing with Section 23001) shall be a violation of*
34 *Section 19542.*

35 *(c) (1) To effectuate the Financial Institution Record Match*
36 *System, financial institutions subject to this section shall provide*
37 *to the Franchise Tax Board on a quarterly basis the name, record*
38 *address, and other addresses, social security number or other*
39 *taxpayer identification number, and other identifying information*
40 *for each delinquent tax debtor, as identified by the Franchise Tax*

1 *Board by name and social security number or other taxpayer*
2 *identification number, who maintains an account at the institution.*

3 *(2) The first data file created by the Franchise Tax Board for*
4 *purposes of matching tax debtor records to financial institution*
5 *accountholder records shall be limited to 600,000 tax debtor*
6 *records. The number of tax debtor records included in a subsequent*
7 *data file created by the Franchise Tax Board may be increased by*
8 *no more than 600,000 tax debtor records greater than the number*
9 *of tax debtor records included in the immediately preceding data*
10 *file until all eligible tax debtor records are included in the data*
11 *match file.*

12 *(d) Unless otherwise required by law, a financial institution*
13 *furnishing a report or providing information to the Franchise Tax*
14 *Board pursuant to this section shall not disclose to a depositor or*
15 *an accountholder, or a codepositor or coaccountholder, that the*
16 *name, address, social security number or other taxpayer*
17 *identification number, or other identifying information of that*
18 *delinquent tax debtor has been received from or furnished to the*
19 *Franchise Tax Board.*

20 *(e) A financial institution shall incur no obligation or liability*
21 *to any person arising from any of the following:*

22 *(1) Furnishing information to the Franchise Tax Board as*
23 *required by this section.*

24 *(2) Failing to disclose to a depositor or accountholder that the*
25 *name, address, social security number or other taxpayer*
26 *identification number, or other identifying information of that*
27 *delinquent tax debtor was included in the data exchange with the*
28 *Franchise Tax Board required by this section.*

29 *(3) Any other action taken in good faith to comply with the*
30 *requirements of this section.*

31 *(f) The Franchise Tax Board may institute civil proceedings to*
32 *enforce this section.*

33 *(g) Any financial institution that willfully fails to comply with*
34 *the rules and regulations promulgated by the Franchise Tax Board*
35 *for the administration of delinquent tax collections, unless it is*
36 *shown to the satisfaction of the Franchise Tax Board that the*
37 *failure is due to reasonable cause, shall be assessed a penalty*
38 *upon notice and demand of the Franchise Tax Board and collected*
39 *in the same manner as tax. The penalty imposed under this section*
40 *shall be in an amount equal to fifty dollars (\$50) for each record*

1 *not provided, but the total imposed on that financial institution*
2 *for all such failures during any calendar year shall not exceed one*
3 *hundred thousand dollars (\$100,000).*

4 *(h) For purposes of this section:*

5 *(1) “Account” means a demand deposit account, share or share*
6 *draft account, checking or negotiable withdrawal order account,*
7 *savings account, time deposit account, or money market mutual*
8 *fund account, regardless of whether the account bears interest.*

9 *(2) “Financial institution” means:*

10 *(A) A depository institution, as defined in Section 1813(c) of*
11 *Title 12 of the United States Code.*

12 *(B) An institution-affiliated party, as defined in Section 1813(u)*
13 *of Title 12 of the United States Code.*

14 *(C) A federal credit union or state credit union, as defined in*
15 *Section 1752 of Title 12 of the United States Code, including an*
16 *institution-affiliated party of a credit union, as defined in Section*
17 *1786(r) of Title 12 of the United States Code.*

18 *(D) A benefit association, insurance company, safe deposit*
19 *company, money-market fund, or similar entity authorized to do*
20 *business in this state.*

21 *(3) “Delinquent tax debtor” means any person liable for any*
22 *income or franchise tax or other debt referred to the Franchise*
23 *Tax Board for collection as imposed under Part 5 (commencing*
24 *with Section 10701), Part 10 (commencing with Section 17001),*
25 *Part 10.2 (commencing with Section 18401), or Part 11*
26 *(commencing with Section 23001), including tax, penalties, interest,*
27 *and fees, where the tax or debt, including the amount, if any,*
28 *referred to the Franchise Tax Board for collection remains unpaid*
29 *after 30 days from demand for payment by the Franchise Tax*
30 *Board, and the person is not making current timely installment*
31 *payments on the liability under an agreement pursuant to Section*
32 *19006.*

33 *(i) A financial institution shall be reimbursed by the Franchise*
34 *Tax Board for actual costs incurred to implement the provisions*
35 *of this section. Upon receipt of an invoice from the financial*
36 *institution, cost reimbursement by the Franchise Tax Board shall*
37 *be limited to the following:*

38 *(1) For one-time startup costs of a financial institution, no more*
39 *than two thousand five hundred dollars (\$2,500).*

1 (2) *For data matching costs of a financial institution, other than*
2 *one-time startup costs, no more than two hundred fifty dollars*
3 *(\$250) per calendar quarter.*

4 (j) *Implementation of this section shall be contingent on the*
5 *appropriation of funds for the purposes of this section, and shall*
6 *be operative 120 days after that date.*

7 (k) *This section shall apply with respect to persons that are*
8 *delinquent tax debtors on and after the effective date of the act*
9 *adding this section.*

10 SEC. 16. *Section 19504 of the Revenue and Taxation Code is*
11 *amended to read:*

12 19504. (a) The Franchise Tax Board, for the purpose of
13 administering its duties under this part, including ascertaining the
14 correctness of any return; making a return where none has been
15 made; determining or collecting the liability of any person in
16 respect of any liability imposed by Part 10 (commencing with
17 Section 17001), Part 11 (commencing with Section 23001), or this
18 part (or the liability at law or in equity of any transferee in respect
19 of that liability); shall have the power to require by demand, that
20 an entity of any kind including, but not limited to, employers,
21 persons, or financial institutions provide information or make
22 available for examination or copying at a specified time and place,
23 or both, any book, papers, or other data which may be relevant to
24 that purpose. Any demand to a financial institution shall comply
25 with the California Right to Financial Privacy Act set forth in
26 Chapter 20 (commencing with Section 7460) of Division 7 of Title
27 1 of the Government Code. Information that may be required upon
28 demand includes, but is not limited to, any of the following:

29 (1) Addresses and telephone numbers of persons designated by
30 the Franchise Tax Board.

31 (2) Information contained on Federal Form W-2 (Wage and Tax
32 Statement), Federal Form W-4 (Employee's Withholding
33 Allowance Certificate), or State Form DE-4 (Employee's
34 Withholding Allowance Certificate).

35 (b) The Franchise Tax Board may require the attendance of the
36 taxpayer or of any other person having knowledge in the premises
37 and may take testimony and require material proof for its
38 information and administer oaths to carry out this part.

39 (c) (1) The Franchise Tax Board may issue subpoenas or
40 subpoenas duces tecum, which subpoenas must be signed by any

1 member of the Franchise Tax Board, and may be served on any
2 person for any purpose.

3 (2) For taxpayers that have been contacted by the Franchise Tax
4 Board regarding the use of a ~~potentially abusive tax shelter (within~~
5 ~~the meaning of Section 19777)~~ *an abusive tax avoidance*
6 *transaction, as defined by Section 19777 as amended by the act*
7 *amending this paragraph*, the subpoena may be signed by any
8 member of the Franchise Tax Board, the Executive Officer of the
9 Franchise Tax Board, or any designee.

10 (d) Obedience to subpoenas or subpoenas duces tecum issued
11 in accordance with this section may be enforced by application to
12 the superior court as set forth in Article 2 (commencing with
13 Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of
14 the Government Code.

15 (e) When examining a return, the Franchise Tax Board shall
16 not use financial status or economic reality examination techniques
17 to determine the existence of unreported income of any taxpayer
18 unless the Franchise Tax Board has a reasonable indication that
19 there is a likelihood of unreported income. This subdivision applies
20 to any examination beginning on or after October 10, 1999.

21 (f) *The amendments made to this section shall apply to*
22 *subpoenas issued on or after the effective date of the act adding*
23 *this subdivision.*

24 SEC. 17. *Section 19560.5 is added to the Revenue and Taxation*
25 *Code, to read:*

26 *19560.5. Notwithstanding any law to the contrary, to effectuate*
27 *the Financial Institution Record Match System prescribed under*
28 *Section 19266, the Franchise Tax Board may disclose the name*
29 *and social security number or taxpayer identification number to*
30 *designated financial institutions or their authorized processing*
31 *agent for purposes of matching debtor records to accountholder*
32 *records at the financial institution. Any use of the data provided*
33 *by the Franchise Tax Board for a purpose other than those*
34 *identified by Section 19266 is prohibited and considered a violation*
35 *of Section 19542.*

36 SEC. 18. *Section 19571 is added to the Revenue and Taxation*
37 *Code, to read:*

38 *19571. (a) The Franchise Tax Board may disclose to state*
39 *governmental licensing entities information regarding suspension*
40 *of a license pursuant to Section 19265.*

1 (b) Neither the state governmental licensing entity, nor any
2 officer, employee, or agent, or former officer, employee, or agent
3 of a state governmental licensing entity, may disclose or use any
4 information obtained from the Franchise Tax Board, pursuant to
5 this section, except to inform the public of the suspension of a
6 license pursuant to Section 19265.

7 (c) For purposes of this section, the definitions in Section 19265
8 shall apply.

9 SEC. 19. Section 19755 of the Revenue and Taxation Code, as
10 added by Section 13 of Chapter 654 of the Statutes of 2003, is
11 repealed.

12 ~~19755. (a) Notwithstanding Section 19057, with respect to~~
13 ~~proposed deficiency assessments related to an abusive tax~~
14 ~~avoidance transaction, as defined in subdivision (c) of Section~~
15 ~~19753, a notice of a proposed deficiency assessment may be mailed~~
16 ~~to the taxpayer within eight years after the return was filed, or~~
17 ~~within the period otherwise provided in Article 3 (commencing~~
18 ~~with Section 19031) of Chapter 4 of this part, whichever expires~~
19 ~~later.~~

20 ~~(b) This section shall apply to any return filed under this part~~
21 ~~on or after January 1, 2000.~~

22 SEC. 20. Section 19755 of the Revenue and Taxation Code, as
23 added by Section 13 of Chapter 656 of the Statutes of 2003, is
24 amended to read:

25 19755. (a) Notwithstanding Section 19057, with respect to
26 proposed deficiency assessments related to an abusive tax
27 avoidance transaction, as defined in ~~subdivision (c) of Section~~
28 ~~19753~~, Section 19777, other than a gross misstatement within the
29 meaning of Section 6404(g)(2)(D) of the Internal Revenue Code,
30 a notice of a proposed deficiency assessment may be mailed to the
31 taxpayer within eight years after the return was filed, or within the
32 period otherwise provided in Article 3 (commencing with Section
33 19031) of Chapter 4 of this part, whichever expires later.

34 (b) This section shall apply to any return filed under this part
35 on or after January 1, 2000.

36 (c) The amendments made to this section by the act adding this
37 subdivision shall apply to taxable years beginning on or after
38 January 1, 2009.

39 SEC. 21. Section 19777 of the Revenue and Taxation Code is
40 amended to read:

1 19777. (a) If a taxpayer has been contacted by the Franchise
2 Tax Board regarding a reportable transaction, as defined in Section
3 6707A(c)(1) of the Internal Revenue Code with respect to which
4 the requirements of Section 6664(d)(2)(A) of the Internal Revenue
5 Code are not met, any listed transaction, as defined in Section
6 6707A(c)(2) of the Internal Revenue Code, or a gross misstatement
7 within the meaning of Section 6404(g)(2)(D) of the Internal
8 Revenue Code, and has a deficiency, an abusive tax avoidance
9 transaction, and has a deficiency attributable to an abusive tax
10 avoidance transaction, there shall be added to the tax an amount
11 equal to 100 percent of the interest payable under Section 19101
12 on the portion of the deficiency attributable to that transaction for
13 the period beginning on the last date prescribed by law for the
14 payment of that tax (determined without regard to extensions) and
15 ending on the date the notice of proposed assessment is mailed.

16 (b) For purposes of this section, “abusive tax avoidance
17 transaction” means any of the following:

18 (1) A tax shelter as defined in Section 6662(d)(2)(C) of the
19 Internal Revenue Code. For purposes of this chapter, Section
20 6662(d)(2)(C) of the Internal Revenue Code is modified by
21 substituting the phrase “income or franchise tax” for “federal
22 income tax.”

23 (2) A reportable transaction, as defined in Section 6707A(c)(1)
24 of the Internal Revenue Code, with respect to which the
25 requirements of Section 6664(d)(2)(A) of the Internal Revenue
26 Code are not met.

27 (3) A listed transaction, as defined in Section 6707A(c)(2) of
28 the Internal Revenue Code.

29 (4) A gross misstatement, within the meaning of Section
30 6404(g)(2)(D) of the Internal Revenue Code.

31 (5) Any transaction to which Section 19774 applies.

32 ~~(b)~~

33 (c) The penalty imposed by this section is in addition to any
34 other penalty imposed under Part 10 (commencing with Section
35 17001), Part 11 (commencing with Section 23001), or this part.

36 (d) (1) If a taxpayer files an amended return reporting an
37 abusive tax avoidance transaction, described in subdivision (b),
38 after the taxpayer is contacted by the Franchise Tax Board
39 regarding that abusive tax avoidance transaction but before a
40 notice of proposed assessment is issued under Section 19033, then

1 *the amount of the penalty under this section shall be 50 percent*
2 *of the interest payable under Section 19101 with respect to the*
3 *amount of any additional tax reflected in the amended return*
4 *attributable to that abusive tax avoidance transaction.*

5 *(2) If a notice of proposed assessment under Section 19033,*
6 *with respect to an abusive tax avoidance transaction as described*
7 *in subdivision (a), is issued after the amended return described in*
8 *paragraph (1) is filed, the penalty imposed pursuant to subdivision*
9 *(a) shall be applicable to the additional tax reflected in the notice*
10 *of proposed assessment attributable to that abusive tax avoidance*
11 *transaction.*

12 *(e) The amendments made to this section by the act adding this*
13 *subdivision shall apply to notices mailed on or after the effective*
14 *date of the act and to amended returns filed more than 90 days*
15 *after the effective date with respect to taxable years for which the*
16 *statute of limitations for mailing a notice of proposed assessment*
17 *has not expired as of that date.*

18 *SEC. 22. Section 19777.1 is added to the Revenue and Taxation*
19 *Code, to read:*

20 *19777.1. (a) If the notice of proposed assessment of additional*
21 *tax has been sent with respect to the penalty to which Section*
22 *19777 applies, the Chief Counsel of the Franchise Tax Board may*
23 *compromise all or any portion of that penalty for good cause.*

24 *(b) The exercise of authority under subdivision (a) shall be at*
25 *the sole discretion of the Chief Counsel of the Franchise Tax Board*
26 *and may not be delegated.*

27 *(c) Notwithstanding any other law, any determination under*
28 *this section may not be reviewed in any administrative or judicial*
29 *proceeding.*

30 *SEC. 23. Section 13020 of the Unemployment Insurance Code*
31 *is amended to read:*

32 *13020. (a) (1) Every employer who pays wages to a resident*
33 *employee for services performed either within or without this state,*
34 *or to a nonresident employee for services performed in this state,*
35 *shall deduct and withhold from those wages, except as provided*
36 *in subdivision (c) and Sections 13025 and 13026, for each payroll*
37 *period, a tax computed in that manner as to produce, so far as*
38 *practicable, with due regard to the credits for personal exemptions*
39 *allowable under Section 17054 of the Revenue and Taxation Code,*
40 *a sum which is substantially equivalent to the amount of tax*

1 reasonably estimated to be due under Part 10 (commencing with
2 Section 17001) of Division 2 of the Revenue and Taxation Code
3 resulting from the inclusion in the gross income of the employee
4 of the wages which were subject to withholding. The method of
5 determining the amount to be withheld shall be prescribed by the
6 Franchise Tax Board pursuant to Section 18663 of the Revenue
7 and Taxation Code.

8 (2) *For each payroll period ending on or after October 1, 2009,*
9 *the sum shall comport with the changes made to Section 18663 of*
10 *the Revenue and Taxation Code, by the act adding this paragraph.*

11 (b) The department upon request may permit the use of
12 accounting machines to calculate the proper amount to be deducted
13 and withheld from wages, if the calculation produces an amount
14 substantially equivalent to the amount of tax required to be
15 withheld under subdivision (a).

16 (c) Withholding shall not be required by this section with respect
17 to wages, salaries, fees, or other compensation paid by a
18 corporation for services performed in California for that corporation
19 to a nonresident corporate director for director services, including
20 attendance at a board of directors' meeting.

21 *SEC. 24. The Legislature hereby finds and declares the*
22 *following:*

23 (a) *It is the intent of the Legislature that, consistent with the*
24 *decision in Gallo v. United States District Court (9th Cir. 2003)*
25 *349 F.3d 1169, cert. den. (2004) 541 U.S. 1073, the suspension of*
26 *a professional or occupational license pursuant to Revenue and*
27 *Taxation Code Section 19265, as added by Section 14 of this act*
28 *for failure to pay delinquent taxes, is a legislative act, for which*
29 *due process is satisfied by the legislative notice and hearing*
30 *procedures.*

31 (b) *To prevent financial hardship, Section 19265 of the Revenue*
32 *and Taxation Code, as added by this act, grants a delinquent*
33 *taxpayer the opportunity for an additional hearing for financial*
34 *hardship prior to the suspension of a professional or occupational*
35 *license.*

36 *SEC. 25. The provisions of this measure are severable. If any*
37 *provision of this measure or its application is held invalid, that*
38 *invalidity shall not affect other provisions or applications that can*
39 *be given effect without the invalid provision or application.*

1 *SEC. 26. No reimbursement is required by this act pursuant*
2 *to Section 6 of Article XIII B of the California Constitution because*
3 *the only costs that may be incurred by a local agency or school*
4 *district will be incurred because this act creates a new crime or*
5 *infraction, eliminates a crime or infraction, or changes the penalty*
6 *for a crime or infraction, within the meaning of Section 17556 of*
7 *the Government Code, or changes the definition of a crime within*
8 *the meaning of Section 6 of Article XIII B of the California*
9 *Constitution.*

10 *SEC. 27. This act is an urgency statute necessary for the*
11 *immediate preservation of the public peace, health, or safety within*
12 *the meaning of Article IV of the Constitution and shall go into*
13 *immediate effect. The facts constituting the necessity are:*

14 *In order to address the current state fiscal crisis at the earliest*
15 *possible time, it is necessary that this act go into immediate effect.*

16 ~~SECTION 1. It is the intent of the Legislature to enact statutory~~
17 ~~changes relating to the Budget Act of 2009.~~